G. R. S. IX-5]

Previous references.

Present

1918-19

(Ch)

File No. 6-18

Serial Nos. 142

Later references.

Ch 6-18 Sl 3.

Pol 93-18 C1-67

C 185-18 - C1-27

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 142

Part B for July 18

SUBJECT.

Reports Lance-Naik Sher Zaman appeal against the order acquitting Pandit Nand Kishore Chitaloony in the appeal preferred by Shiromani Kashyap against the Circle Pandit Nand Kishore Chitaloony

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To the Govt Advocate
Mr. Nand Kishore Chitaloony } Nos. 547-49 12.7.18

Reports the G. Advocate to prefer an appeal

July 1918

W D 88—GPB—50,000—24-7-16

G. R. S. III—1] 1918.

GENERAL AND REVENUE SECRETARIAT.

(Courts)

NOTES.

File No. 6-18

FILE HEADING.

Appeal against the order of acquittal of the District Magistrate of Chitaldrug in criminal appeal no: 20 of 1917 on the file of this Court.

From

The Government Advocate

No. 7	Dated 5.7.18	Received 5/7.18

Diary No. G 281	Enclos. 1	Spare Copies. -	Serial No. 1

BRIEF ABSTRACT OF LETTER.

Requests sanction to prefer an appeal against the order of acquittal passed by the Dt. Magte of Chitaldrug in the appeal preferred by Thimmallappa against the conviction passed by the Amildar Magte of Davangere.

NOTES AND ORDERS.

Subd. for orders. The time for preferring the appeal expires by the 1st proximo.

W. 6/7.

The Government Advocate's letter explains in detail the circumstances under which the judgment of the Dt. Magistrate cannot well be supported. He finds as a matter of fact

NOTES—First Sheet.

WD 1232—GPB—20,000—18-11-16

G. R. S. III-2

General and Revenue Secretariat. | 45 File No. 6 of 1918-19

Serial No.

that the accused desecrated the image and temple by throwing a stone on it and spitting on the same. He however finds that as he believed in his duty he could not be held to have committed an offence under S. 295. I.P.C. Murder does not appear to be a correct interpretation of Section. Defiling a place or an object held sacred by a class of persons with the intention of thereby insulting the religion or with the knowledge that any class of persons is likely to consider such defilement as an insult to their religion is an offence under S. 295. The Section does not say that a believer in his duty is exempted. In fact the knowledge or intention can be fairly inferred or proved from the act done in the presence of a number of people. It seems clear that the view of the law taken by the Dt. Magistrate, and it is a point for the decision of the Govt. of Bombay may be decided upon an appeal.

First Member

9/7

Very serious reasons exist. An appeal should be preferred in time

8/7

Draft

8/7

4933 8-7

KV 9/7

NOTE—Contn. sheet.

G. R. S. III-2]

General and Revenue Secretariat. | Ch File No. 6 of 1918.

Serial No.	
1	Draft Subd. KN. 9/7 9/7 9/7 — Dmg 13 9/7
2	To. The Govt Advocate. The D. de Chitaldroog No. G-547-8 12th July 1918. Requests the Govt. Advocate to prefer an appeal against the order of acquittal.

B 16/7

NOTE—Contn. sheet.

WD A 1789—GPB—60,000—20-6-18—G.

Urgent

No. 7
Enc. 1

DIARY No. 9. 281

12 -18
SECTION Courts
FILE No. 6-18
CASE

Office of the Government Advocate in Mysore,
Bangalore, Dated the 4th July 1918.

5th

GEN. & REP. Br.
Ch. Self
15 JUL 1918

From

07699 The Government Advocate in Mysore,
Bangalore.

To

The Chief Secretary to the Government of
H. H. the Maharaja of Mysore, Bangalore.

ccs 4-25

Sir,

I have the honor to bring to the notice of Government that on the Revision side, a case of acquittal on appeal by - the District Magistrate of Chitaldroog has come up before the Chief Court. I have been notified by the Chief Court and it appears to me that the order of acquittal is based on an erroneous view of the object and scope of Section 295 of the - Indian Penal Code. The accused in the case in question took a vow to the Village deity during the illeness of his daughter but owing to her death got so enraged that in a fit of combined grief and fury he rushed into the temple, flung a stone on the deity and followed it up by spitting on the face of the idol. This act of desecration seems to have wounded the religious feelings of the other devotees of the temple. As

GEN. & REP. Br.
III
JUD.
5 JUL 1918

a result of their complaint the Court of first instance convicted the accused and sentenced him to pay a fine of Rs. 5/- The District Magistrate while believing the version given by the Prosecution, appears to have misapplied the law. The Chief Court may decline on the Revision side to rectify the error, as it is open to Government to prefer an appeal against the order of acquittal. The time allowed for preferring the appeal will expire by the 1st August 1918. I request you, in these circumstances, to obtain the early sanction of Government to prefer an appeal under section 417, Criminal Procedure Code,, against the order of acquittal.

2. A copy of the District Magistrate's Judgment is herewith forwarded for the information of Government.

I have the honor to be,

S I R,

Your most obedient servant,

Government Advocate

IN THE COURT OF THE DISTRICT MAGISTRATE, CHITALDRUG DT.

Present:-

Md. Zahiruddin Mecci Esq., B. A.,
District Magistrate.

Dated the 1st February 1918.

Petition of Criminal Appeal No. 20 of 1917-18 against the conviction and sentence passed by the Amildar and Second Class Magistrate, Davanagere in Criminal Case No. 41 of 1917-18

APPELLANT.

Thirumalappa, by Mr. C. Khande Rao. Vs. Government (Head Quarter Inspector).

The Police of the Davanagere Taluk charge sheeted before the Amildar Magistrate, that the appellant accused spat on the Goddess Kariamma of the Jayalaghatta Village and disfigured the same by hitting it with a stone. The magistrate enquired into the case and found the appellant guilty of the offence under section 295, I. P. C., and sentenced him to pay a fine of Rs. 5/- and in default of payment to suffer simple imprisonment for five days.

2. The grounds of appeal presented on 2-1-1918 are as follows:-

(1) That the evidenceof the prosecution witnesses is equally insterested and discrepant as those of the Defence. There is no reason to believe one and disbelieve the other;

(2) That the accused is one of the Devotees of the Goddess in question and it is most likely that he could have defiled the idol which he worships with great devotion.

3.

(3). That the complaint is the outcome of the ill-will that exists among the villagers and

(4). That intention necessary to constitute the offence under section 295 I. P. C., is wanting in this case.

J U D G M E N T.

This is a simple case. The facts are briefly that the appellant who is a vaidar and admittedly a believer in the -- Kariamma had taken a harike to the deity to the effect that if his daughter who had fallen ill, should recover from her illness he would pay a kanike (offering) of Rs. 10. Unfortunately the daughter died and when she was being taken for cremation and he was accompanying the corpse, he rushed into the temple, spat on the image and threw a stone on it thereby disfiguring the same. All the witnesses examined for the Prosecution corroborated each other and this version may be taken as fairly correct. But the question is if this conduct of the accused renders him liable under section 295 I. P. C., There can be little doubt that the accused (appellant) damaged and defiled the place of worship, but we have to consider if he had the intention as defined in Section 295 I. P. C., It is not alleged that he is a disbeliever. On the contrary it is admitted that he had taken a vow to make an offering to the deity in case his daughter should recover. It is obvious that the section can hardly be made applicable to one who is actually a believer in a particular deity or place of worship.

2. As regards the appellant, it is in evidence that as soon as he approached the temple precincts, he lost all control over himself and in a fit of fury spat on the image and disfigured it. This shows that he was so overpowered with grief over the loss of his daughter that his act may well be said to be governed by sec-

tion

section 84 of the Indian Penal Code.

3. It is also important to note that the complainants or the aggrieved parties asked the appellant to bear the cost of purifying the idol and as he had refused to do so, they had recourse to the Criminal Court. This shows not that their religious feelings were insulted but that they wanted to bring him to terms through the agency of a criminal Court instead of a Civil tribunal.

4. For the foregoing reasons, the conviction and sentence of the Lower Court are set aside. The fine, if recovered will be refunded.

Sd/- M. Zahiruddin Mecci,
District Magistrate.

COPY.

G.R.S. VI-71]

SUBJECT.....

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Diary No. of letter replied to.....

General and Revenue Secretariat

( )

, *the* 191

Date of issue..... 12.7.18

Signed by..... M.Z. GS. Dy.1

Section Courts

File No. 618

Serial No. 2

Proceedings of the Government of His Highness the Maharaja of Mysore.

Read.—

Letter no. 785 th July 1918 from the Govt. Advocate in Mysore forwarding a copy of the Judgment of the District Magistrate of Chitaldrug in Criminal Appeal no. 20 of 1917 on the file of his Court and requesting sanction to prefer an appeal against the order of acquittal passed in the said case.

Order Thereon:— No.

Order: G 5478

Under Section 417 of the

over.

May this be

i Printed?

ii treated as a standing order?

iii published in the Gazette English part?

iv translated?

v placed at the disposal of the press?

vi published in the Gazette Kannada part?

Criminal Pro: Code, the Govt. Advocate is requested to prefer an appeal against the order of acquittal.

For Chief Secy

do. The Govt. Advocate in Mysore
" Dt. Magte of Chitaldrug

KW

List of enclosures.

Copied by

Examined by